

1 JAMES V. FITZGERALD, III (State Bar No. 55632)
2 NOAH G. BLECHMAN (State Bar No. 197167)
3 J. GARRET DEAL (State Bar No. 249934)
4 McNAMARA, DODGE, NEY, BEATTY, SLATTERY,
5 PFALZER, BORGES & BROTHERS LLP
6 1211 Newell Avenue
7 Post Office Box 5288
Walnut Creek, CA 94596
Telephone: (925) 939-5330
Facsimile: (925) 939-0203

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7 Attorneys for Defendants
ALEX CAINE and the CITY OF SAN PABLO

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10 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

11 CHRISTIAN J. BRACKO,

12 Plaintiff,

13 vs.

14 ALEX CAINE; CITY OF SAN PABLO;
and DOES 1-10, inclusive,

15 Defendants.
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Case No. C08-00239 JL

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS
PLAINTIFF'S STATE LAW CAUSES OF
ACTION; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION OF
NOAH G. BLECHMAN; REQUEST FOR
JUDICIAL NOTICE AND [PROPOSED]
ORDER**

Date: July 2, 2008
Time: 9:30 A.M.
Dept.: Courtroom F, 15th Floor
Judge: Hon. James Larson

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21 **NOTICE OF MOTION AND MOTION TO DISMISS PLAINTIFF'S CAUSES OF
ACTION BASED ON CALIFORNIA LAW PURSUANT TO FEDERAL RULE OF CIVIL
PROCEDURE 12(b)(6) FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF
MAY BE GRANTED**

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23 TO PLAINTIFF AND HIS ATTORNEY OF RECORD:

24 Please take notice that on July 2, 2008, at 9:30 a.m., before the Honorable James Larson,
25 in Courtroom F, 15th Floor, at U.S. District Court, 450 Golden Gate Avenue in San Francisco,
26 California, or as soon thereafter as this matter can be heard, Defendants the CITY OF SAN
27 PABLO and ALEX CAINE will and hereby do move for dismissal of all of Plaintiff's causes of
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DEFENDANTS' NOTICE OF MOTION AND
MOTION TO DISMISS; CASE NO. C08-00239-JL

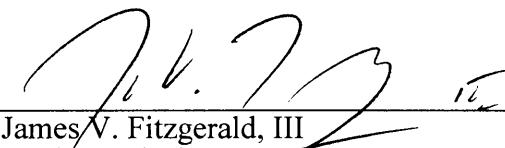
1 action based upon California law contained in Plaintiff's Second Amended Complaint (Attached
2 as Exhibit G to Declaration of Noah G. Blechman, filed herewith) in this action pursuant to
3 Federal Rule of Civil Procedure 12(b)(6), including the 2nd through 10th causes of action.

4 Defendants are entitled to dismissal of all state law claims in Plaintiff's Second Amended
5 Complaint because Plaintiff fails to state claims under California law upon which relief may be
6 granted, inasmuch as his state law claims were not timely presented in compliance with the
7 California Government Tort Claims Act.

8 This motion shall be based upon this Notice of Motion to Dismiss Plaintiff's Causes of
9 Action Based on California Law, Supporting Memorandum of Points and Authorities, Declaration
10 of Noah G. Blechman, Defendants' Request for Judicial Notice, and the Proposed Order, all filed
11 or lodged herewith, as well as the file in this case, the argument of counsel at the hearing, and any
12 such further matters as the Court deems appropriate.

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14 Dated: May 19, 2008

15 MCNAMARA, DODGE, NEY, BEATTY, SLATTERY,
16 PFALZER, BORGES & BROTHERS LLP

17 By: 

18 James V. Fitzgerald, III
Noah G. Blechman
J. Garret Deal
19 Attorneys for Defendants
ALEX CAINE and the CITY OF SAN PABLO
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